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JAN 05 2009

OFFICE OF PETITIONS

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| In re Application of | : | |
| CHIORINI et al. | : | DECISION ON PETITION |
| Application No. 10/719,311 | : | UNDER 37 CFR 1.137(b) |
| Filed: 11/20/2003 | : | |
| Attorney Docket No. 14014.0252U3 | : | |

This is a decision on the petition under 37 CFR 1.137(b), filed September 29, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 21, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). Petitioner did not submit a timely and proper request for an extension of time for response pursuant to the provisions of 37 CFR 1.136(a). Accordingly, the date of abandonment of this application is June 22, 2008.

In response to the final Office action, petitioner filed an amendment on June 19, 2008. The Examiner reviewed the amendment and determined that the amendment did not place the application in condition for allowance. The Examiner issued an Advisory Action on September 5, 2008. On September 29, 2008, petitioner filed the present petition.

The present petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (and fee) and the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

The Office notes that an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). As petitioner submitted the \$1,050.00 extension of time fee on September 29, 2008, after the maximum extendable period for reply, the fee is unacceptable. The Office will refund the \$1,050.00 fee.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

This application is being referred to Technology Center AU 1633 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

A handwritten signature in black ink that reads "Christina Tartera Donnell". The signature is written in a cursive, flowing style.

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions